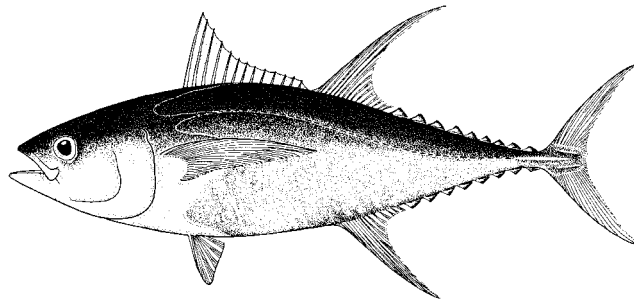


DRAFT ENVIRONMENTAL ASSESSMENT,  
INCLUDING A  
REGULATORY IMPACT REVIEW  
FOR A PROPOSED RULE TO  
AMEND THE HIGHLY MIGRATORY SPECIES (HMS) FISHERY REGULATIONS  
ASSOCIATED WITH  
CHARTER/HEADBOAT OPERATIONS, AND REQUIRE PERMITS FOR VESSELS  
FISHING RECREATIONALLY FOR HMS



United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Sustainable Fisheries  
Highly Migratory Species Management Division

*March 2002*

**Implement Regulatory Amendments to the consolidated regulations contained in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) associated with HMS Charter/Headboat (HMS CHB) Permits, implement an HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow the National Marine Fisheries Service (NMFS) to adjust BFT retention limits by vessel type.**

**Proposed Action:** Amend the consolidated regulations implementing the HMS FMP to clarify certain provisions pertaining to the definition and operations of HMS CHB Permits. Revised regulations are needed given the broader CHB permit requirement, and NMFS must clarify regulations regarding the sale of fish and applicability of daily catch limits on board vessels permitted in the HMS CHB permit category. NMFS is also proposing to implement an Atlantic HMS recreational vessel permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels and allow NMFS to adjust BFT retention limits by vessel type.

**Type of statement:** Draft Environmental Assessment (EA) and Regulatory Impact Review (RIR)

**Lead Agency:** National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries (F/SF)

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**Abstract:** On May 28, 1999 NMFS published a final rule (64 FR 29090) to implement the HMS FMP and Amendment One to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into 50 CFR 635. After issuance of the final HMS FMP and publication of the final consolidated rule, NMFS received comment that activities previously authorized under the HMS regulations when issued under separate CFR parts, were now prohibited due to the consolidated format of the regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS

FMP. However, addressing other more substantive issues raised about omissions from, or corrections to, the consolidated regulations requires a regulatory amendment under the framework provisions of the HMS FMP and the Billfish FMP. Some issues still require further clarification due to the delayed implementation to the HMS CHB permit, such as: captain requirements; the ability to sell fish, and applicability of daily catch limits on board vessels used for several purposes. This action requests comments on the proposed amendments to the HMS regulations to: 1) define CHB operations and clarify regulations regarding the applicability of daily retention limits and sale of HMS; 2) implement an Atlantic HMS recreational vessel permit; 3) adjustment of time frame for change of Atlantic HMS and Atlantic tunas permit category; 4) clarify regulations pertaining to allowed BFT fisheries in the Gulf of Mexico; 5) allow NMFS to adjust BFT retention limits by vessel type.

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## **1.0 Purpose and need for Action**

The purpose of this Draft Environmental Assessment (EA) is to proposed regulatory amendments to the Fishery Management Plans for Atlantic Swordfish, Tunas, Sharks, and Atlantic Billfish (HMS FMP). The National Marine Fisheries Service (NMFS), Highly Migratory Species (HMS) Management Division proposes regulatory amendments to: clarify the definition and operations of HMS Charter/Headboats (CHBs), implement an Atlantic HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to adjust BFT retention limits by vessel type. In this EA, NMFS considers the biological, social, and economic impacts of the regulatory amendment, as well as those of the status quo and other alternatives.

Current HMS regulations require vessels that take fee-paying passengers fishing for HMS to obtain an HMS CHB permit, and the vessel operates under the CHB regulations at all times, regardless if the vessel is engaged in for-hire fishing or otherwise on a particular trip. The HMS CHB permit is required in lieu of any other commercial or recreational category tunas permit. A vessel issued an HMS CHB permit could also be issued, but is not required to obtain or posses, swordfish or shark limited access permits. This proposed action would clarify the HMS regulations regarding CHB operations by defining a “for-hire” trip and clarifying the applicability of catch limits when CHBs are engaged or not engaged in for-hire fishing. Consistent with other regulations issued under the authority of the Magnuson-Stevens Act, NMFS proposes to define a for-hire trip as when a vessel carries a passenger who pays a fee or has a specified number of persons aboard; more than three persons for a vessel licensed to carry six or fewer; more than the required number of crew for a Coast Guard inspected vessel. The number of persons aboard would be enumerated inclusive of the operator and crew and the retention limits would also apply to the operator and crew. Given this definition of “for-hire” fishing, further clarifications to the regulations pertaining to CHB operations are proposed relative to the sale of fish, applicability of retention limits, and licensed captain requirements.

Currently HMS regulations require recreational vessel owners fishing for Atlantic tunas to obtain an Atlantic tunas Angling category vessel permit. This proposed action would extend the current Angling category permit to be required for recreational fishing for all managed HMS. This proposed action would enable NMFS to monitor recreational landings and catch and release statistics more accurately, thereby enhancing HMS management and research efforts. The total universe of HMS recreational fishermen, and their effort, catch and bycatch (including discards) is presently unknown. Estimates of some of these parameters are currently made using survey instruments, such as the Large Pelagic Survey (LPS) and the Marine Recreational Fisheries Statistics Survey (MRFSS), as well as reporting from registered tournaments. An HMS recreational permit system would greatly improve information available to NMFS regarding the recreational HMS fisheries by providing an accurate measure of participation, which will greatly help in estimating effort, catch and bycatch (including discards) from one of the most significant components of the HMS fisheries.

Current regulations allow Atlantic HMS and Atlantic tunas permit holders to change their vessel permit category only once per fishing year (June 1 - May 31 of the following year), and that change must occur before May 15. These regulations are meant to prevent vessels from fishing in more than one category in a particular fishing year. Due to changes in the current method of permit issuance, some modifications to these regulations are required. Atlantic tunas permits can now be obtained, 24-hours a day, 7 days a week, through an Internet based permitting system. As a result of these changes, NMFS proposes to allow the one permit category change per fishing year to occur up until the first day of the fishing year, June 1. In addition, NMFS proposes to allow the one permit category change per fishing year to occur after June 1, so long as it occurs with the permit renewal for that fishing year. These changes would provide NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and still prevent vessels from participating in more than one fishing category in a particular fishing year.

Current regulations under 635.23(b) and (c) could be interpreted to mean that in the Gulf of Mexico, Angling category vessels could retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while CHB vessels could not. This rule would modify the regulations to clarify that the only BFT that could be retained by Angling category and CHB vessels in the Gulf of Mexico is one large medium or giant BFT per vessel per year, caught incidentally while fishing for other species. These large medium or giant BFT would be considered the “trophy” fish for the vessel and sale would not be permitted.

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the CHB category are fishing under the Angling category BFT quota, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, the current situation can be inequitable for vessels carrying 30 passengers, as their limit is set at the same amount of fish as a vessel with a charter of two to six people.

Prior to the 1999 consolidation of the HMS regulations into one CFR part, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat), but this explicit authority was (unintentionally) not maintained in the consolidated regulations. This proposed rule would restore the Atlantic tunas regulations giving NMFS explicit authority to set differential retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

## **1.1 Regulatory history**

### *Charter/Headboat Operations*



On May 28, 1999, NMFS published a final rule (64 FR 29090) that implemented the HMS FMP and an Amendment to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into one CFR part. After issuance of the final HMS FMP and publication of the final consolidated rule, NMFS received comment that several provisions of the regulations were inconsistent with the HMS FMP. Additionally, several commenters indicated that activities previously authorized under the HMS regulations when issued under separate CFR parts, were now prohibited due to the consolidated format of the regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. One of the issues clarified in the technical amendment was that the three yellowfin tuna (YFT) per person recreational retention limit applied to vessels with Atlantic CHB permits.

NMFS first required CHB permits for Atlantic tunas vessels in 1994. Given quota reductions and allocation issues in the recreational BFT fisheries, it became necessary to improve inseason monitoring of catch, particularly for school BFT. In response, NMFS began issuing permits in order to develop a telephone dialing frame for a fishing effort survey. Recognizing that charter vessels and headboats tend to have higher effort rates than private recreational vessels and, on average, higher catch rates, NMFS established a separate permit category for the purposes of stratifying the two populations for the telephone survey. Issuing separate permits for private and for-hire vessels also facilitated the issuance of regulations tailored to the unique aspects of each category (e.g., catch limits, sale of fish).

In developing the HMS FMP, the HMS Advisory Panel (AP) noted the significance of the for-hire fleet in the recreational fisheries for tunas, billfishes and sharks. The HMS AP recommended that NMFS expand the CHB permit program from Atlantic tunas to include vessels targeting any HMS so that catch and effort monitoring could be improved, and NMFS adopted this permit requirement in the HMS FMP. With all HMS vessels included in the permit system, NMFS can now select a more representative sample of CHB vessels for the logbook program and telephone survey.

In the final consolidated rule, NMFS delayed the effective date of the HMS CHB permit requirement pending Office of Management and Budget (OMB) approval of an increase in reporting burden due to the broader HMS permit. OMB approval was received in August 2000. On June 7, 2001, NMFS published a Federal Register Notice notifying the public and establishing that as of July 1, 2001, all vessels taking paying customers to fish for Atlantic tunas, swordfish, sharks, and billfish must obtain an Atlantic HMS CHB permit (66 FR 30651). The implementation of the broader permit requirement raised issues regarding the definition of CHB operations and for-hire fishing, the applicability of retention limits, and the sale of fish by CHBs. Addressing these issues requires a regulatory amendment under the framework provisions of the HMS FMP. Thus, further clarifications to the regulations pertaining to CHB operations are being proposed via regulatory amendment to the HMS FMP.

#### *HMS Recreational Vessel Permit*

NMFS proposes a permit requirement for all HMS vessels fishing recreationally for managed HMS. A permit requirement is currently in place for those vessels fishing recreationally for Atlantic tunas. This proposed action would extend that measure to require all recreational vessels to obtain a vessel permit in order to fish recreationally for all managed HMS.

On June 20, 1979, NMFS published a final rule (44 FR 36043) which required any vessel which fishes for, catches or takes BFT, except vessels operated by anglers fishing for young school or school BFT, must have a permit issued to it. These permits were issued at no charge in perpetuity until 1991. In 1991 NMFS' rule making set up an annual vessel permit renewal system with a \$20.00 fee to recover administrative costs (56 FR 50061, October 3, 1991). On August 27, 1993, NMFS published a final rule that extended the annual BFT commercial permit requirement to include recreational vessels as well, thus creating the Angling category permit (58 FR 45286). This requirement had a delayed implementation date of May, 15, 1994. In 1994, NMFS began issuing recreational BFT permits. At this time permit fees were waived due to the administrative burden of check processing, and the renewal period for bluefin tuna permits was increased from one to three years.

On July 27, 1995, NMFS extended the vessel permit requirement to include not only vessels fishing for BFT, but vessels participating in all Atlantic tuna fisheries (60 FR 38505). This rule created the requirement for all commercial and recreational vessels taking BFT, yellowfin, bigeye, albacore and skipjack tunas, and for all commercial vessels taking Atlantic bonito to possess an Atlantic tunas permit.

In 1996 NMFS determined the process and policies of using federal employees to issue free, 3-year vessel permits were no longer appropriate. NMFS responded to these needs by turning to the private sector and negotiated with a private contractor to issue Atlantic tunas permits on an annual basis. NMFS sent a letter to all tuna permit holders in November 1996 to notify them that NMFS was moving to an automated, annual permit with a fee of \$18. The deadline for obtaining an annual permit was set at March 31, 1997 (FR 62 331, January 3, 1997); NMFS later changed (and finalized) the deadline to September 1, 1997 (62 FR 30741, June 5, 1997). As described above, the HMS FMP included a measure to require vessels taking fee-paying passengers fishing for managed HMS to obtain an HMS CHB permit. This requirement was fully implemented in July 2001.

#### *Vessel Permit Category Change Deadline*

In the final rule (64 FR 29090, May 28, 1999 ) that implemented the HMS FMP and an Amendment to the Atlantic Billfish FMP, regulations allow Atlantic HMS CHB and Atlantic tunas permit holders to change their vessel permit category only once per fishing year, and that change must occur prior to May 15. These regulations are meant to prevent vessels from landing BFT in more than one quota category in a single fishing year. NMFS has extended this deadline on several occasions to provide vessel owners the opportunity to consider category changes after publication of regulatory changes, since these regulatory actions could affect the allowable

operations of several fishing categories.

### *Retention of BFT in the Gulf of Mexico by Recreational and HMS CHB Vessels*

In 1982, ICCAT recommended a ban on directed fishing for BFT in the Gulf of Mexico to protect the spawning stock. This action primarily impacted Japanese longline fishermen in the area, as U.S. longline gear had already been prohibited from targeting BFT in the Gulf of Mexico since 1981. NMFS issued additional regulations in 1983 to subdivide the Incidental BFT quota for longline fishermen, and to allow the retention of one giant BFT per year by vessels using rod and reel gear (48 FR 27745, June 17, 1983). No other handgear-caught BFT could be retained in the Gulf of Mexico, and the one giant “incidental” rod and reel-caught BFT could not be sold. The annual limit of one giant (large-medium or giant since 1992) BFT per vessel for handgear vessels in the Gulf of Mexico is still in place, and is now part of the BFT Angling category “trophy” quota.

The 1999 consolidation of the HMS regulations into one CFR part resulted in the BFT Angling category retention limit regulations for the Gulf of Mexico being unclear, and the current regulations under 635.23(b) and (c) could be interpreted to mean that in the Gulf of Mexico, Angling category vessels may retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while HMS CHBs may not. This rule would modify the regulations to clarify that the only BFT that could be retained by Angling category and HMS CHB vessels in the Gulf of Mexico is one large medium or giant BFT per vessel per fishing year, caught incidentally while fishing for other species.

### *Adjustment of BFT Retention Limits by Vessel Type*

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the CHB category are fishing under the Angling category BFT quota, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, the current situation can be inequitable for vessels carrying 30 passengers, as their limit is set at the same amount of fish as a vessel with a charter of two to six people.

Prior to the 1999 consolidation of the HMS regulations into one CFR part, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat), but this explicit authority was (unintentionally) not maintained in the consolidated regulations. This proposed rule would restore the Atlantic tunas regulations giving NMFS explicit authority to set differential retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

## **1.2 The FMP and the framework process**

Since April 1999, NMFS has been managing Atlantic tunas, swordfish, and shark fisheries under the authority of the Magnuson-Stevens Act and the HMS FMP, in addition to Atlantic Tunas Convention Act (ATCA). The HMS FMP established a framework procedure for adjustment of the regulations necessary to achieve the management objectives in the HMS FMP. The framework process requires a complete regulatory package (Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Analysis, as appropriate), a public comment period, and at least one public hearing. Under the HMS FMP, an AP meeting is not required for a framework regulatory amendment. However, the topic of defining HMS CHBs and their fishing practices, has been discussed at several AP meetings. Following the public comment period, NMFS makes final determinations regarding consistency of the proposed measures with the objectives of the HMS FMP, the National Standards, and other applicable law.

The HMS FMP includes a suite of management objectives for all HMS fisheries. The following objectives are particularly pertinent to this rulemaking:

- “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems. Optimum yield is the maximum sustainable yield from the fishery, reduced by any relevant social, economic, or ecological factors”;
- “To minimize, to the extent practicable, economic displacement and other adverse impacts on fishing communities during the transition from overfished fisheries to healthy ones”; and
- “To better coordinate domestic conservation and management of the fisheries for Atlantic tuna, swordfish, sharks, and billfish, considering the multispecies nature of many HMS fisheries, overlapping regional and individual participation, international management concerns, historical fishing patterns and participation, and other relevant factors”.

The purpose of this framework action is to meet the above objectives established by the HMS FMP, the Magnuson-Stevens Act, and International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, by addressing the management needs outlined in Section 1. The consequences of the alternatives considered to address these, and corresponding analyses, are discussed in more detail in Section 5 of this document.

## **1.3 Endangered Species Act and Marine Mammal Protection Act**

If adopted, the preferred alternatives in this EA/RIR would not be expected to increase endangered species or marine mammal interaction rates. On June 14, 2001, NMFS issued a

Biological Opinion (BiOp) after concluding formal consultation for the HMS fisheries under Section 7 of the Endangered Species Act (ESA). The preferred alternatives will not significantly alter current fishing practices and will not likely increase takes of listed species or result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources.

The handline/rod-and-reel gear fisheries are listed as category III fisheries under the Marine Mammal Authorization Program (MMPA) due to their remote likelihood of interaction with marine mammals. Although a few reports of entanglement in handline and harpoon gear exist, these were likely non-injurious entanglements from which the whales could easily disentangle themselves or be disentangled. Increased development of the Disentanglement Network under the Atlantic Large Whale Take Reduction Plan should provide adequate mitigation for these infrequent (and thus far, non-lethal) entanglements.

#### **1.4 Impacts on Essential Fish Habitat**

The Magnuson-Stevens Act established a program to promote the protection of essential fish habitat (EFH) in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH.

In the HMS FMP, the area in which this action is planned has been identified as EFH for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, Southeast Fishery Management Council, Gulf of Mexico Fishery Management Council, and the Highly Migratory Species Division of NMFS. It is not anticipated that this action would have any adverse impacts to EFH and therefore no consultation is required.

#### **2.0 Alternatives**

The following alternatives represent the range of options considered by NMFS regarding the definition of HMS for-hire trips, the implementation of an HMS recreational vessel permit, adjusting the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, to clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to adjust BFT retention limits by vessel type. Alternatives are evaluated with respect to available data on each action.

##### **2.1 Issue 1: Definition of an HMS For-Hire Trip**

The alternatives range from the status quo (no action) to a definition based upon the number of passengers or fee-paying passengers onboard a vessel. These alternatives also include

other regulatory options based upon how a “for-hire” trip is defined. Alternatives are evaluated with respect to availability of data on HMS CHB activity.

### **2.1.1 Alternative 1: Status Quo – Take no action (No Definition of CHB Trip)**

This alternative would maintain the status quo, in which there is no definition of what constitutes a charter trip versus a commercial trip for HMS CHB vessels. Vessels with a HMS CHB permit currently fish under the same regulations regardless of whether they are operated in a for-hire capacity or as a commercial vessel.

### **2.1.2 Alternative 2: Define For-Hire Trips Based on Fee-paying Passengers or Number of Persons Onboard. (Preferred Alternative)**

This alternative would define a for-hire trip as a trip carrying a fee-paying passenger or having more than three persons for a vessel licensed to carry six or fewer or more than the required number of crew for an United States Coast Guard inspected vessel. The number of persons aboard would be enumerated inclusive of the operator and crew and the retention limits would also apply to the operator and crew.

### **2.1.3 Alternative 3: Define CHB Trips as Those Taken Aboard a Permitted HMS CHB with a Licensed Captain Onboard.**

This alternative would define a for-hire trip as only those trips taken by a vessel possessing an HMS CHB permit while a Coast Guard licensed operator was onboard the vessel. For those trips made by a vessel possessing an HMS CHB permit while a Coast Guard licensed operator was not onboard the vessel would be operating in a commercial capacity.

## **2.2 Issue 2: Require all Vessels Fishing Recreational for HMS to Obtain a Vessel Permit**

The following alternatives represent the range of options considered by NMFS regarding the implementation of an HMS recreational vessel permit. Alternatives are evaluated with respect to available data on each action.

### **2.2.1 Alternative 1: Status Quo – Take no action (Permit Requirements Limited to Atlantic tunas)**

This alternative would maintain the status quo, in which the HMS regulations require vessels fishing recreationally for Atlantic tunas to obtain an Atlantic tunas Angling category permit. Federal vessel permits are not required for vessels fishing recreationally for Atlantic sharks, swordfish, or billfish.

### **2.2.2 Alternative 2: Require all Vessels Fishing Recreationally for Atlantic HMS to Obtain an Atlantic HMS Angling Category Permit (Preferred Alternative)**

This alternative would extend the current permit requirement for those vessels fishing recreationally for Atlantic tunas to all vessels fishing recreationally for all managed HMS.

**2.2.3 Alternative 3: Require All Vessels Fishing Recreationally for Sharks, Swordfish, and Billfish to obtain a Recreational Permit for each Species group.**

This alternative would require a recreational permit for sharks if a vessel is recreational fishing for sharks in Federal waters. This alternative would also require separate recreational permits for swordfish and billfish if the vessel is recreational fishing for either Atlantic swordfish or billfish. These three permit requirements would be in addition to the current Atlantic tunas Angling category permit requirement.

**2.3 Issue 3: Adjustment of Time Frame for Change of Atlantic HMS an Atlantic Tunas Permit Category**

The following alternatives represent the range of options considered by NMFS regarding the adjustment of the time frame for permit category changes for the Atlantic HMS and Atlantic tunas permits. Alternatives are evaluated with respect to available data on each action.

**2.3.1 Alternative 1: Status Quo – Take no action (Maintain May 15 Deadline)**

This alternative would maintain the status quo, which in the HMS regulations states that a Atlantic HMS or Atlantic tunas vessel owner/operator may change the category of the vessel's permit no more than once each fishing year and only from the time the permit is issued until May 15. From May 16 to the end of the fishing year, the vessel's permit category may not be changed, regardless of a change in vessel's ownership.

**2.3.2 Alternative 2: Allow a Permit Category Change at Any Time, Provided that the Permit Category Change Occurs with the Permit Renewal for that Fishing Year (Preferred Alternative).**

This alternative would allow one permit category change per fishing year for vessels with an Atlantic HMS or Atlantic tunas permit. This change in permit category must be made prior to the start of the fishing year for which the permit will be effective. The permit category change would also be allowed after the start of the fishing year, as long as it takes place with the permit renewal for that year.

**2.3.3 Alternative 3: Allow One Permit Category Change to Occur Prior to the Publication of the Final Initial BFT Quota Specifications and General Category Effort Controls.**

This alternative would allow one permit category change per fishing year that must be made prior to the finalization of the initial BFT quota specifications and General category effort controls for the same fishing year.

## **2.4 Issue 4: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels.**

The following alternatives represent the range of options considered by NMFS regarding the clarification of the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels. Alternatives are evaluated with respect to available data on each action.

### **2.4.1 Alternative 1: Status Quo – Take no action**

This alternative would maintain the status quo language in the regulatory text which is currently unclear and could be misinterpreted. Current regulations under 635.23(b) and (c) could be interpreted to mean that in the Gulf of Mexico, Angling category vessels could retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while HMS CHBs could not.

### **2.4.2 Alternative 2: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels.**

This alternative would modify the current language in 635.23(b) and (c). The language would modify the regulations to clarify that the only BFT that could be retained by an Angling category or a HMS CHB vessel in the Gulf of Mexico is one large medium or giant per vessels per fishing year, caught incidentally while fishing for other species.

## **2.5 Issue 5: Adjust BFT Retention Limits by Vessel Type**

The following alternatives represent the range of options considered by NMFS regarding the authority to allow NMFS to adjust BFT retention limits by vessel type (i.e., charter boats vs. headboats). Alternatives are evaluated with respect to available data on each action.

### **2.5.1 Alternative 1: Status Quo - Take no action (No Distinction by Vessel Type)**

This alternative would maintain the status quo language in the regulatory text which currently does not make a distinction between charter boat and headboat vessels permitted in the CHB category that are fishing under the Angling category.

### **2.5.2 Alternative 2: Provide NMFS with the Authority to set BFT Limits by Vessel Type**

This alternative would give NMFS the authority to set differential BFT retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

## **3.0 Small Business Regulatory Enforcement and Fairness Act and EO 12566**



The Small Business Regulatory Enforcement and Fairness Act of 1996 amended the Regulatory Flexibility Act (RFA) and made compliance with Sections of the RFA subject to judicial review. The purpose of the RFA is to require agencies to assess impacts of their proposed regulations on small entities and is intended to encourage Federal agencies to utilize innovative administrative procedures when dealing with small entities.

In compliance with Executive Order 12866, the Department of Commerce and the National Oceanic and Atmospheric Administration (NOAA) require the preparation of a Regulatory Impact Review (RIR) for all regulatory actions that either implement a new Fishery Management Plan or significantly amend an existing plan, or may be significant in that they reflect agency policy and are of public interest. The RIR is part of the process of preparing and reviewing FMPs and regulatory actions and is intended to provide a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way.

The analyses required for the RIR and under the RFA are included in Section 6, and are discussed throughout this document, especially under the impacts of the various alternatives described in Section 5.

#### **4.0 Description of the fishery and affected environment**

The fisheries affected by this proposed action are the for-hire and recreational sectors of the HMS fisheries, and this section will describe these fisheries as they are affected by the proposed action. A more complete history and description of these and other HMS fisheries is provided in the HMS FMP, Amendment One to the Billfish FMP, and recent HMS Stock Assessment Fishery Evaluation (SAFE) reports, and is not repeated here.

##### **HMS Charter/Headboats**

The HMS FMP established a permitting requirements for all vessels that take fee-paying passengers fishing for Atlantic HMS, and approximately 3,250 HMS CHB permits were issued for the 2000 fishing year. Table 14.1 displays the estimated number of rod and reel and handline trips targeting large pelagic species in 2000. The trips include commercial and recreational trips, and are not specific to any particular species. Based on the 2000 LPS, an estimated 4,573 charter trips targeting HMS were taken from Maine to Virginia. There were approximately 1,884 vessels permitted in the CHB category for that same geographical area and time frame. Assuming there is an equal ratio of number of CHB permit holders to number of trips taken for states North Carolina through Texas as there is for states Maine through Virginia, the number of trips taken from North Carolina through Texas can be estimated by extrapolating from the number of trips

taken from Maine to Virginia. According to the 2000 Atlantic HMS and Atlantic tunas permit database, there were approximately 1,379 vessels from states North Carolina through Texas that possessed a CHB permit. Thus an estimated 3,347 CHB trips targeting HMS occurred from states North Carolina through Texas. Thus, for Maine through Texas there were an estimated 7,920 charter trips taken during the 2000 season.

NMFS has received several comments indicating that activities previously authorized under the HMS regulations when issued under separate CFR parts, were now prohibited due to the consolidated format of the regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. One of the issues clarified in the technical amendment was that the three YFT per person recreational retention limit applied to vessels with HMS CHB permits.

NMFS has received comment that applying the YFT retention limit at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. These commenters have indicated that a few dozen charter vessels in the Mid-Atlantic region have historically conducted commercial fishing trips for YFT when not operating as a for-hire vessel. Further, these commenters noted that the HMS FMP did not specifically address commercial fishing by the for-hire fleet and its supporting analyses did not consider the impacts of prohibiting such commercial fishing on a part-time basis.

#### *Yellowfin Tuna Landings by Charter/Headboats and General Category Vessels*

Commercial handgear landings for YFT for 1997-2000, by area and gear, are presented in Tables 13.2 and 13.3. In 2000 commercial handgear landings of YFT totaled 283.7 metric tons (mt), or approximately four percent of total U.S. yellowfin landings in 2000, or nine percent of commercial landings. Southeast Regional Office (SERO) dealer weighout data include 839 handgear trips that sold YFT from 1998 through 2000, and under 60 (seven percent) of these were reported by CHBs, thus commercial landings by CHB vessels are approximately 0.3 percent of total U.S. yellowfin landings, or 0.6 percent of commercial landings. SERO dealer weighout data show that, on average, vessels with Atlantic tunas General category permits landed 22 YFT per trip during 1999 and 2000.

The HMS CHB permit is considered a commercial tuna permit in that tunas caught by vessels possessing the permit may be sold. Prior to July 1, 1999, CHB vessels had the ability to retain and sell all YFT that were caught, as long as they met the minimum size requirements. From the beginning of 1998 through July 1, 1999, SERO weighout data consists of 31 trips made by CHB vessels which landed and sold YFT. Out of those trips, 25 percent landed three or fewer YFT, 42 percent landed between four and six YFT, 10 percent landed between seven and nine YFT, and finally 23 percent landed 10 or more YFT per trip. Based on SERO weigh-out data the average number of YFT landed by a CHB for this time period is seven fish per trip. After July 1, 1999, CHB vessels only had the ability to retain three YFT per person, including captain and

mates, as long as they met the minimum size requirements. From July 1, 1999 through the end of 2000, SERO weigh-out data lists 22 trips were made by vessels permitted in the CHB category that landed and sold YFT. Out of those 22 trips, 73 percent landed three or fewer YFT, 27 percent landed between four and six YFT, and 0 percent landed between seven or more YFT. Based on SERO weigh-out data the average number of YFT landed by a CHB for this time period is two fish per trip. This information is presented graphically in Figure 13.1.

Looking at the weight-out data submitted to the Northeast Regional Office (NERO) for the time frame of 1997 through July 1, 1999, a total of 82 trips were reported by vessels permitted in the CHB category where YFT were landed and sold YFT. Out of those 82 trips 18 percent landed three or fewer YFT, 18 percent landed between four and six YFT, 11 percent landed between seven and nine YFT, and 51 percent landed 10 or more YFT per trip. Based on NERO weigh-out data the average number of YFT landed by a CHB for this time period is 16 fish per trip. Looking at the weight-out data submitted to NERO for the time frame of July 1, 1999 through 2001 a total of 83 trips made by vessels permitted in the CHB category and sold YFT were reported. Out of those trips 16 percent landed three or fewer YFT, 19 percent landed between four and six YFT, 13 percent landed between seven and nine YFT, and 51 percent landed 10 or more YFT per trip. Based on NERO weigh-out data the average number of YFT landed by a CHB for this time period is 15 fish per trip This information is presented graphically in figure 13.2.

For the time frame of 1997 through July 1, 1999, 1,454 trips were reported by vessels holding the Atlantic tunas CHB category permit to the NERO vessel trip report (VRT) data collection program. Out of those 1,454 trips 47 percent reported landing three or less YFT, 21 percent reported landing between four and six YFT, 11 percent reported landing seven to nine YFT, and 21 percent reported landing 10 or more YFT per trip. Note that there is no differentiation between those trips where YFT were retained for personal use or those sold commercially. For the time frame of July 1, 1999 through the end of 2001, 2,285 trips were reported by vessels holding the Atlantic tunas CHB category permit to the NERO VRT data collection program. Out of those 2,285 trips 46 percent reported landing three or less YFT, 17 percent reported landing between four and six YFT, 11 percent reported landing seven to nine YFT, and 26 percent reported landing 10 or more YFT per trip. Again, note that there is no differentiation between those trips where YFT were retained for personal use versus those sold commercially.

#### *Limited Access Shark and Swordfish Permits and Charter/Headboats*

The HMS FMP established a limited access program for the commercial swordfish and shark fisheries (all gears), as well as for tunas (longline only). Chapter Four of the HMS FMP includes a complete description of the limited access program. The HMS regulations prevent vessels with a directed or incidental swordfish permit from possessing an HMS CHB permit (they must possess an Atlantic tunas Longline category permit), but vessels with shark limited access permits and/or swordfish Handgear permits may also possess an HMS CHB permit. Currently, there are four vessels that have both Atlantic HMS CHB permits and incidental limited access

shark permits, and 14 vessels that possess both HMS CHB permits and swordfish handgear permits. No commercial landings of sharks or swordfish were reported by these vessels in 1999 or 2000.

Current HMS regulations do not differentiate between fishing methods (for-hire vs. commercial) for vessels that have both types of permits. For example, if a vessel with an incidental shark permit and an HMS CHB permit were engaged in for-hire recreational fishing, the vessel would be allowed to retain and sell sharks per the incidental commercial limits (five large coastal, 16 small coastal/pelagics), even though the vessel carried recreational fee-paying passengers on board. Similarly, the regulations do not allow retention of sharks in a particular management group by vessels with limited access shark permits after the shark management unit is closed, even if the vessel were engaged in for-hire recreational fishing. The same is true for swordfish, although there is an allowance for swordfish retention once the directed quota is closed, and there is no recreational retention limit currently in effect.

### **The HMS Recreational Fishery**

The recreational fisheries for HMS are described in the HMS FMP (Section 2.5.8), Amendment One to the Billfish FMP (Section 2.1.3), and in the most recent HMS SAFE report (Section 4.4). Atlantic tunas, sharks, and billfish are all targeted by recreational fishermen using rod and reel gear. Atlantic swordfish are also targeted and, although this fishery had declined dramatically over the past twenty years, recent anecdotal reports suggest that a recreational swordfish fishery may be rapidly growing in the Mid-Atlantic Bight and off the East Coast of Florida (for more information, see the draft EA for the proposed rule to establish a recreational retention limit for swordfish). Recreational fishing for Atlantic HMS is managed primarily through the use of minimum sizes and bag limits. Recreational bluefin tuna fishing regulations are the most complex and include a combination of minimum sizes, bag limits, seasons based quota allotment, and reporting requirements. Bluefin tuna are the only HMS species managed under a recreational quota for which the fishing season closes after the quota has been met. Yellowfin tuna have a three fish per person daily retention limit and a minimum size, and bigeye tuna are also subject to a minimum size. While Atlantic marlin have associated landing caps (a maximum amount of fish that can be landed), the overall strategy for management of recreational billfish fisheries is based on use of minimum size limits. The recreational fishery for swordfish is also managed through a minimum size requirement, and retention limits have recently been proposed. The recreational shark fishery is managed through retention limits in conjunction with minimum size requirements. Additionally, the possession of 19 species of sharks is prohibited.

Atlantic tunas are the only HMS species group that require a permit for recreational fishing at this time. The permit database is used as a sampling frame for the LPS, which is used to estimate recreational catch and effort of large pelagic species.

There were approximately 15,031 Atlantic tunas Angling permits issued for the 2000 fishing year. Table 13.1 displays the estimated number of rod and reel and handline trips targeting

large pelagic species in 2000. The trips include commercial and recreational trips, and are not specific to any particular species. Based on the 2000 LPS, an estimated 14,672 private vessel trips targeting HMS were taken from Maine to Virginia. There were approximately 10,050 vessels permitted in the Angling category for that same geographical area and time frame. The number of private trips from North Carolina through Texas can be estimated in a manner similar to that used to estimate charter trips. According to the 2000 Atlantic HMS and Atlantic tunas permit database, there were approximately 4,981 vessels from states North Carolina through Texas that possessed an Angling permit. Thus, an estimated 7,272 private vessel trips targeting HMS occurred from states North Carolina through Texas. Thus, for Maine through Texas there were an estimated 21,944 private fishing trips targeting large pelagics taken during the 2000 season.

## **5.0 Consequences of Alternatives Including the Preferred Alternative**

The ecological, social and economic impacts of each alternative identified in Section 2 are discussed below in the context of the relevant National Standards and the objectives of the HMS FMP. Additionally, economic impacts of each alternative are described in Section 6 (draft RIR).

### **5.1 Issue 1: Definition of an HMS For-Hire Fishing Trip**

#### **5.1.1 Alternative 1: Status Quo – Take No action**

This alternative would maintain the status quo, in which there is no definition of what constitutes a for-hire trip versus a commercial trip for HMS CHB vessels. Vessels with a HMS CHB permit currently fish under the same regulations regardless of whether they are operated in a for-hire capacity or as a commercial vessel.

#### *Ecological Impacts*

NMFS expects few, if any, ecological impacts as a result of maintaining the status quo. Commercial handgear comprised four percent of total U.S. yellowfin landings in 2000, or nine percent of commercial landings. Southeast Regional dealer weighout data include 839 handgear trips that sold YFT from 1998 through 2000, and under 60 (seven percent) of these were reported by CHBs, thus commercial landings by CHB vessels are approximately 0.3 percent of total U.S. yellowfin landings, or 0.6 percent of commercial landings. The status quo would limit commercial YFT landings by these vessels to three fish per person. Commercial handgear YFT trips usually only involve a captain and one or two crew members, so the most YFT that could be landed under the status quo would be nine per trip.

Shark and swordfish landings are controlled by a quota system, and the status quo would not affect quotas. In addition, as described in Section 4, the few vessels that would be affected by defining CHB operations (CHBs with shark and/or swordfish handgear permits), did not report commercial landings of shark or swordfish in 1999 or 2000.

## *Social and Economic Impacts*

As described in Sections 1 and 4, vessels operating as CHBs by taking fee-paying anglers fishing for HMS may, on occasion, sell fish taken by those anglers. In addition, some of these vessels may, when not operating as a CHB, directly engage in commercial fishing operations. The status quo does not recognize the dual nature of the operations of vessels with CHB permits, and, in the case of YFT, restricts them to the recreational retention limit regardless of the nature of the trip. NMFS has received comment that applying the recreational YFT retention limit at all times to CHBs precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. The SERO dealer weighout data indicate that the number of YFT landed and sold per trip by CHB vessels decreased after the implementation of the recreational retention limit in 1999.

Weighout data from the NMFS' SERO and NERO dealer reports indicate that 21 vessels with HMS CHBs landed and sold YFT on 52 trips in 2000. As described in the RIR (Section 6), this results in annual average revenues from YFT sales of \$1,456.

In regards to shark and swordfish retention limits and their applicability to retention limits, current regulations are unclear on the application of recreational retention limits for vessels that possess HMS CHB permits and shark and/or swordfish handgear limited access permits. Applying commercial limits at all time for these vessels could preclude them from retaining sharks and/or swordfish on legitimate for-hire trips when the commercial fisheries are closed, and would also allow them to fish in excess of recreational limits (even if engaged in recreational or for-hire fishing) when the commercial fisheries are open. NMFS has not received comments on the magnitude of this problem, and if it has affected many fishermen. As described above, the few CHBs that also have limited access permits to sell sharks and swordfish did not report any sales of sharks and swordfish during 1999 and 2000.

## *Conclusion*

This alternative is not preferred. Current regulations do not account for the different modes of fishing by vessels with HMS CHB permits. Current regulations do not provide for legitimate commercial YFT fishing by vessels that also sometimes operate as for-hire vessels, and are unclear in the applicability of retention limits for vessels with certain permit combinations. This alternative does not address the management needs described in Section 1.0.

### **5.1.2 Alternative 2: Define For-Hire Trips Based on Fee-paying Passengers or Number of Persons Onboard. (Preferred Alternative)**

This alternative would define a for-hire trip as a trip carrying a passenger who pays a fee or having more than three persons for a vessel licensed to carry six or fewer or more than the required number of crew for an USCG inspected vessel. The number of persons aboard would be enumerated inclusive of the operator and crew and the retention limits would also apply to the

operator and crew.

Under this alternative, CHB vessels would be subject to the recreational YFT limits only when engaged in for-hire fishing. Vessels with shark limited access and HMS CHB permits would be subject to the recreational shark retention limits when engaged in for-hire fishing, and the retained sharks could be sold if allowed at the time under the commercial regulations (i.e., the fishery was not closed). For swordfish, vessels with limited access swordfish handgear permits and HMS CHB permits would be subject to recreational swordfish limits (if adopted) when engaged in for-hire fishing, and the retained swordfish could be sold if allowed at the time under the commercial regulations (i.e., the fishery was not closed).

### *Ecological Impacts*

Similar to the status quo, there would be minimal, if any, ecological impacts as a result of this alternative. Commercial handgear comprised four percent of total U.S. yellowfin landings in 2000, or nine percent of commercial landings. Southeast Regional dealer weighout data include 839 handgear trips that sold YFT from 1998 through 2000, and under 60 (seven percent) of these were reported by CHBs, thus commercial landings by CHB vessels are approximately 0.3 percent of total U.S. yellowfin landings, or 0.6 percent of commercial landings. This alternative would remove the three fish per person limit for HMS CHBs when not engaged in for-hire fishing, similar to vessels with General category Atlantic tunas permits.

Shark and swordfish landings are controlled by a quota system, and this alternative would not affect quotas. In addition, as described in Section 4, the few vessels that would be effected by defining CHB operations (CHBs with shark and/or swordfish handgear permits), did not report commercial landings of shark or swordfish in 1999 or 2000.

### *Social and Economic Impacts*

This alternative recognizes the dual nature of the operations of vessels with CHB permits, and, defines for-hire fishing in a way that would allow such vessels to fish under commercial limits when not engaged in for-hire fishing. The proposed definition of for-hire fishing is similar to that used in other U.S. fisheries (Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic). For those vessels that engage in both for-hire and commercial fishing, the impact of this alternative would be positive, as it would allow them to participate in both fisheries.

Weighout data from the NMFS' SERO and NERO dealer reports indicate that 21 vessels with HMS CHBs landed and sold YFT on 52 trips in 2000. As indicated in the RIR (Section 6), if CHBs were not subject to the three YFT per person limit (and landed YFT in similar amounts to General category vessels), total revenues from commercial YFT handgear landings would rise by 3.6 percent.

Section 7 of this document, the Preliminary Economic Evaluation, indicates that this

alternative would result in annual revenues of \$3,559 per year from YFT sales, a 144 percent increase from the status quo, for the 21 vessels that had HMS CHB permits and sold YFT in 2000. See Section 7 for more details.

This alternative would also maintain the current regulations that require a vessel issued an HMS CHB category permit to have a Coast Guard licensed operator on board when fishing for or retaining Atlantic HMS. Without such a requirement, owners of private vessels would have an incentive to obtain a CHB permit to be eligible to sell tunas and/or avoid retention limits otherwise applicable to the recreational fishery.

### *Conclusion*

This is the preferred alternative. This alternative would define for-hire fishing operations in a manner consistent with other Federal regulations, and in a way that would allow CHBs the flexibility to participate in commercial fisheries when not engaged in for-hire fishing. This alternative also clarifies regulations regarding the sale of fish and applicability of retention limits for CHBs. This alternative addresses the management needs described in Section 1, furthers the goals and objectives of the HMS FMP, and is consistent with the Magnuson-Stevens Act and the National Standard Guidelines.

#### **5.1.3 Alternative 3: Define For-Hire Trips as Those Taken Aboard a Permitted HMS CHB with a Licensed Captain Onboard**

This alternative would define a for-hire trip as only those trips taken by a vessel possessing an HMS CHB permit while a Coast Guard licensed operator was onboard the vessel. For those trips made by a vessel possessing an HMS CHB permit while a Coast Guard licensed operator was not onboard, the vessel could operate in a commercial capacity, but could not take fee-paying passengers onboard.

### *Ecological Impacts, Social and Economic Impacts*

Similar to the status quo and the preferred alternative, this alternative would have minimal ecological impacts, as it would not likely change the amount of HMS landed to any measurable degree. As indicated in the RIR and Preliminary Economic Evaluation (Sections 6 and 7), this alternative is not expected to change YFT landings by CHBs. This is the case because all vessels that operate as both a CHB and a commercial vessel would likely be operated by an individual with a Coast Guard licence, and thus would always be subject to the YFT recreational retention limit. This would result in a situation identical to the status quo, where vessels with CHB permits are all subject to the YFT recreational retention limit. Thus, this alternative would not result in a change (from the status quo) in YFT commercial handgear landings or revenues.

Current regulations require that, for a vessel issued an HMS CHB category permit, a Coast Guard licensed operator must be on board when fishing for or retaining Atlantic HMS.



NMFS has received comment that the licensed operator requirement is overly restrictive for non-licensed owners of permitted vessels who wish to fish for HMS as a private vessel (i.e., no fee-paying anglers aboard). Without such a requirement, however, owners of private vessels would have an incentive to select the CHB permit to be eligible to sell fish and/or avoid retention limits otherwise applicable to the recreational fishery. Such an incentive would likely result in a large number of private vessels obtaining permits for the CHB category.

### *Conclusion*

This alternative is rejected because it would undermine the statistical purpose of separating the for-hire sector of the HMS fleet from the private recreational and commercial sectors of the fleet.

## **5.2 Issue 2: Require all Vessels Recreational Fishing for HMS to Obtain a Vessel Permit**

### **5.2.1 Alternative 1: Status Quo – Take no action**

This alternative would maintain the status quo, in which the HMS regulations require vessels fishing recreationally for Atlantic tunas to obtain an Atlantic tunas Angling category permit. Federal vessel permits are not required for vessels fishing recreationally for Atlantic sharks, swordfish, or billfish.

### *Ecological Impacts*

The data collected under the current permitting and reporting requirements provide NMFS with important information about the recreational HMS fisheries. Not having a complete universe of vessels participating in the recreational HMS fisheries, however, limits NMFS' ability to obtain catch and effort information. Increasing the quality and scope of information collected would improve NMFS' ability to manage HMS fisheries. While permitting requirements do not have a direct ecological impact, maintenance of the status quo would prevent NMFS from collecting information on catch and effort in HMS recreational fisheries, which in turn could result in management decisions that adversely affect efforts to rebuild and maintain healthy HMS stocks, minimize bycatch in HMS fisheries, and address other issues regarding conduct and impacts of HMS fisheries.

### *Social and Economic Impacts*

While continuing the status quo permitting requirements would impose no additional burden on the regulated community, it may contribute to substantial negative social and economic impacts. If lack of adequate data were to result in the management actions (or lack thereof) that result in overfishing and/or bycatch, for example, the negative long-term economic consequences could be substantial for fishery participants and communities.

## *Conclusion*

This alternative is rejected because current data collection on HMS recreational fisheries needs to be improved. Failure to collect additional data will hinder effective HMS management, and thus may have significant negative ecological, social, and economic consequences.

### **5.2.2 Alternative 2: Require all Vessels Fishing Recreationally for Atlantic HMS to Obtain an Atlantic HMS Angling Category Permit (Preferred Alternative)**

This alternative would extend the current permit requirement for those vessels fishing recreationally for Atlantic tunas to all vessels fishing recreationally for all managed Atlantic HMS. The Atlantic tunas Angling category permit would be changed to an Atlantic HMS Angling permit, and would be required for vessels fishing recreationally for Atlantic tunas, sharks, swordfish, and billfish.

## *Ecological Impacts*

This alternative would enable NMFS to more accurately monitor recreational landings, and catch and release statistics for all recreational highly migratory species, thereby enhancing HMS management and research efforts. The universe of recreational fishermen, and their effort, catch and bycatch is poorly known at present, with a possible exception for the Atlantic tunas fisheries. Estimates of some of these parameters are currently made using survey instruments, such as the LPS and the MRFSS, as well as reporting from registered tournaments. An Atlantic HMS recreational permit system would greatly improve information available to NMFS regarding the recreational Atlantic HMS fisheries by providing an accurate measure of participation, which will greatly help in estimating effort, catch and bycatch (including discards) from one of the most significant components of the Atlantic HMS fisheries.

Information collected from permit applications could be used by NMFS to monitor participation in Atlantic HMS fisheries. The vessel permit would also provide essential information for domestic recreational fishery management policy. For example, a recreational HMS permit database would provide NMFS with a sampling frame that is the basis for fleet size calculations used for catch and effort estimates in fisheries that do not require mandatory reporting. As mentioned above, permitting requirements do not have a direct ecological impact, but increased information on participation, catch, and effort in Atlantic HMS recreational fisheries could result in management decisions that benefit stocks.

## *Social and Economic Impacts*

As mentioned above, monitoring Atlantic HMS recreational fisheries, particularly Atlantic billfish and swordfish, can be a challenge due to the rare event nature of these fisheries (i.e., fewer boats fishing offshore than inshore and success rates may be lower for large pelagics than for inshore species), the timing of landings (e.g., late-day returns from offshore trips), and the wide

geographic range of landings (i.e., Texas to Maine and the Caribbean). Trips landing swordfish, sharks, blue marlin, white marlin, and sailfish are intercepted relatively infrequently within the scope of NMFS' current recreational statistical programs (the MRFSS and the LPS). By including other HMS in the recreational tuna permit, fisheries scientists would have access to the universe of participants in the Atlantic HMS fishery. Increased information on participation, catch, and effort is required for effective fisheries management, and could enhance monitoring as well as compliance and enforcement. Finally, information on the vessel owners participating in Atlantic HMS recreational fisheries is needed for NMFS to analyze impacts of management measures on small businesses.

A measure to permit HMS anglers could increase the regulatory burden on recreational fishermen, by requiring that they participate in an annual permit process. However, the regulatory burden for both anglers and NMFS should be significantly reduced by incorporating the existing recreational permitting requirement (Angling category permit for Atlantic tunas) into the expanded Atlantic HMS permit requirement. Many saltwater fishermen target multiple HMS; for example, some who target billfish also catch other large pelagic species like tuna and sharks. Tuna anglers are already required to hold a recreational permit, so the new permitting burden will be borne by those anglers that participate in the recreational fisheries for sharks, swordfish, or billfish, but have not participated in the tuna fishery.

Annual permit issuance/renewal would not have a significant impacts on small businesses. The renewal process is automated, eliminating the majority of paperwork and mailing time for forms. The universe of affected anglers could include the following: the nearly 13,000 vessels currently permitted in the Atlantic tunas Angling (recreational) category, approximately 10,000 billfish anglers (minimum estimate based on the number of billfish tournament anglers from Fisher and Ditton, 1992), and vessels engaged solely in recreational shark or swordfish fishing. The number of vessels associated with the 10,000 billfish anglers, as well as the extent of the overlap between billfish vessels, recreational shark and swordfish vessels, and (already permitted) tuna vessels is unknown, but the overlap is likely significant. Thus the universe of affected vessel owners is likely to be smaller than the sum of the above estimates, as only one permit would be required for participation in any HMS recreational fishery. Annual permit issuance/renewal would not have a significant impact on HMS anglers. The renewal process would be the same automated system currently in effect for Atlantic tunas permits, reducing paperwork and mailing time for forms.

### *Conclusion*

This alternative is preferred because it will greatly improve NMFS' collection of data from the recreational HMS fisheries at a relatively small social and economic cost. This alternative addresses the management needs described in Section 1, furthers the goals and objectives of the HMS FMP, and is consistent with the Magnuson-Stevens Act and the National Standard Guidelines.

### **5.2.3 Alternative 3: Require All Vessels Fishing Recreationally for Sharks, Swordfish, and Billfish to obtain a Recreational Permit.**

This alternative would require separate recreational permits for sharks, swordfish, and billfish. These three permit requirements would be in addition to the current Atlantic tunas Angling category permit requirement.

#### *Ecological, Social, and Economic Impacts*

The impacts of this alternative would be similar to those of the preferred alternative, except that this alternative would have a greater administrative burden on the public. Under this alternative, those vessels participating in recreational HMS fisheries may need to obtain four individual recreational permits (tuna, shark, swordfish, and billfish) depending on the species the vessel wishes to retain. The burden imposed on fishermen by this increased permitting requirements (e.g., four separate permit fees, and the time it takes to apply for and renew four separate) would constitute a negative social/economic impact.

#### *Conclusion*

This alternative is rejected due to the excessive burden it places on the recreational constituent.

### **5.3 Issue 3: Adjustment of Time Frame for Change of Atlantic HMS and Atlantic Tunas Permit Category**

#### **5.3.1 Alternative 1: Status Quo – Take no action**

This alternative would maintain the status quo, which in the HMS regulations states that a Atlantic HMS or Atlantic tunas vessel owner/operator may change the category of the vessel's permit no more than once each fishing year and only from the time the permit is issued until May 15. From May 16 to the end of the fishing year, the vessel's permit category may not be changed, regardless of a change in vessel's ownership.

#### *Ecological, Social and Economic Impacts*

The alternatives for adjusting the time frame for changing permit categories would not have a direct ecological impact. The current regulations allow Atlantic tunas permit holders to change their vessel permit category only once per year, and that change must occur before May 15. These regulations are meant to prevent vessels from landing BFT in more than one quota category in a single fishing year. One of the problems with this alternative is that it does not provide NMFS or fishery participants added time and flexibility to issue regulations and choose permit categories, respectively. In addition, the current regulations on permit category change can result in unfortunate situations for persons purchasing vessels that have been permitted in the

Atlantic tunas fishery in the past. For example, under current regulations, if a recreational fisherman were to purchase a vessel during the month of June that was permitted in the Atlantic tunas General category three years ago (but has not had a valid permit since), the new owner could not purchase an HMS Angling permit - the vessel would only be allowed to have a permit in the General category because it was past the May 15 deadline.

### *Conclusion*

This alternative is rejected because it unnecessarily restricts the ability for a fishery participant to make educated choices regarding their vessels permit category.

#### **5.3.2 Alternative 2: Allow a Permit Category Change at Any Time, Provided that the Permit Category Change Occurs with the Permit Renewal for that Fishing Year (Preferred Alternative).**

This alternative would allow one permit category change per fishing year for vessels with an Atlantic tunas permit or an Atlantic HMS Angling or HMS CHB permit. This change in permit category must be made prior to the start of the fishing year for which the permit will be effective. The permit category change would also be allowed after the start of the fishing year, however, as long as it takes place with the permit renewal for that fishing year.

### *Ecological, Social and Economic Impacts*

This alternative would not have direct ecological impacts. Atlantic tunas permits can now be obtained within minutes, 24-hours a day, 7 days a week, through the Internet. As a result of these changes, NMFS proposes to allow the one permit category change to occur until the first day of the fishing year, June 1. In addition, NMFS proposes to allow the one permit category change to occur after June 1, so long as it occurs with the renewal for that year. This would provide added flexibility to fishery participants to make knowledgeable choices on permit category selection, and would prevent situations where persons that purchase new vessels are unknowingly stuck with the permit category of the previous owner from past years.

### *Conclusion*

This alternative is preferred because it would provide NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and still prevents vessels from participating in more than one BFT fishing category in a particular fishing year.

#### **5.3.3 Alternative 3: Allow One Permit Category Change to Occur Prior to the Publication of the Final Initial BFT Quota Specifications and General Category Effort Controls.**

This alternative would allow one permit category change per fishing year that must be made prior to the finalization of the initial BFT quota specifications and General category effort controls for the same fishing year.

#### *Ecological, Social and Economic Impacts*

This alternative would not have direct ecological impacts. NMFS attempts to publish final initial quota specifications and General category effort controls before the beginning of the fishing year. Part of the rationale for the adjustment of the fishing year from a calendar year to one that begins June 1 was to provide adequate time for the development of proposed and final specifications after the annual ICCAT meeting which is held in November. However, due to the variations in workload this is not always possible and some delays may be experienced.

#### *Conclusion*

This alternative is not preferred because it could potentially undermine the original intent of the regulation which is to prevent vessels from participating in more than one fishing category in a particular fishing year.

### **5.4 Issue 4: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels.**

#### **5.4.1 Alternative 1: Status Quo – Take no action**

This alternative would maintain the status quo language in the regulatory text which is currently unclear and could be misinterpreted.

#### *Ecological, Social and Economic Impacts*

The current regulations regarding the retention of BFT by recreational and CHB vessels in the Gulf of Mexico may be interpreted to mean that HMS Angling vessels could retain school, large-school, and small medium BFT subject to the retention limits in place at the time while CHB vessels could not. ICCAT Recommendations do not allow for any directed fishing for BFT in the Gulf of Mexico, which is a recognized spawning area for BFT. Regulations that could be interpreted to allow directed fishing for BFT in the Gulf of Mexico would be contrary to ICCAT Recommendations.

#### *Conclusion*

This alternative is not preferred because the current regulatory text is unclear, and does not meet the original intent behind the regulations, which is to not allow directed fishing for BFT in the Gulf of Mexico.

#### **5.4.2 Alternative 2: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels (Preferred Alternative).**

This alternative would modify the current language in 635.23(b) and (c) to clarify that the only BFT that could be retained by an Angling or an HMS CHB vessel in the Gulf of Mexico is one large medium or giant per vessels per fishing year, caught incidentally while fishing for other species.

##### *Ecological Impacts, Social and Economic Impacts*

This alternative would modify the current regulations to clarify them and ensure that they are consistent with ICCAT Recommendations on BFT fishing in the Gulf of Mexico. Due to the fact that this alternative would not be changing the current regulations regarding the recreational retention limits of BFT in the Gulf of Mexico, but modifying the language to clarify those regulations, the impacts would be negligible.

##### *Conclusion*

This alternative is preferred because it would alleviate some confusion in regards to the recreational retention limits of BFT in the Gulf of Mexico by HMS CHB and recreational Angling vessels. It is consistent with ICCAT Recommendations, and with the intent of current regulations.

### **5.5 Issue 5: Adjust BFT Retention Limits by Vessel Type**

#### **5.5.1 Alternative 1: Status Quo – Take no action**

This alternative would maintain the status quo language in the regulatory text regarding retention limit adjustments, which currently does not make a distinction between vessel types (e.g., charter boats and headboats) in authorizing inseason changes to the BFT retention limits.

##### *Ecological, Social and Economic Impacts*

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the HMS CHB category are fishing under the Angling category BFT quota, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, the current situation can be inequitable for Coast Guard inspected vessels authorized to carry a larger number of passengers, as their limit is set at the same amount of fish as a vessel with a charter of two to six anglers. Prior to the 1999 consolidation of the HMS regulations into one CFR part, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat

vs. headboat), but this explicit authority was (unintentionally) not maintained in the consolidated regulations.

This alternative would have little ecological impact as mortality in the BFT fisheries is controlled through a quota system, with allocations for the different user groups. In 2001, NMFS set a differential BFT retention limit for headboats (Coast Guard inspected vessels), which provided headboat operators the chance to book trips and enhance recreational fishing opportunities in a sector of the fishery that had not participated in the BFT fishery over the last several years (66 FR 42805, August 15, 2001). As mentioned above, the current regulations are not explicit in allowing such differential retention limits, as they were previous to the regulatory consolidation, and the status quo would maintain the lack of clarity and explicitness in the regulations.

### *Conclusion*

This alternative is not preferred because the current regulatory text does not meet the original intent behind the BFT regulations, which was to allow NMFS optimal flexibility in setting BFT retention limits in order to maximize utilization of the quota.

### **5.5.2 Alternative 2: Provide NMFS with the Authority to set BFT Limits by Vessel Type (Preferred Alternative).**

This alternative would give NMFS the authority to set differential BFT retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the BFT fishery.

### *Ecological, Social and Economic Impacts*

This alternative would restore the Atlantic tunas regulations which included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat), but was unintentionally omitted in the consolidated regulations. This alternative could also potentially lead to additional landings of recreationally caught BFT, but because BFT are managed underneath a quota system no adverse ecological impacts would occur. As mentioned above, NMFS set a differential BFT retention limit for headboats (Coast Guard inspected vessels) in 2001, which provided headboat operators the chance to book trips and enhance recreational fishing opportunities in a sector of the fishery that had not participated in the BFT fishery over the last several years (66 FR 42805, August 15, 2001). This alternative would restore the explicit authority to make such inseason adjustments.

### *Conclusion*

This is the preferred alternative. This alternative would modify the HMS regulations to clarify that NMFS has the authority to set differential BFT retention limits by vessel type, so that



NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery. This alternative is consistent with the intent behind the BFT retention limit adjustment regulations, which is to allow NMFS optimal flexibility in setting BFT retention limits in order to maximize utilization of the quota.

## **6.0 Regulatory Impact Review**

Under Executive Order (EO) 12866, Federal agencies are required to “assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. . .” Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.” In order to comply with EO 12866, NMFS prepares a Regulatory Impact Review (RIR) that analyzes the net economic benefits and costs of each alternative to the nation and the fishery as a whole. This section of this document assesses the economic impacts of the alternatives considered in the development of this rulemaking. However, certain elements required in an RIR are also required as part of an environmental assessment (EA). Thus, this section should only be considered part of the RIR. The rest of the RIR can be found throughout this document. Section 1 of this document describes the need for action and the objectives of the regulations. The alternatives considered are listed in Section 2, described in Section 5, and include measures to define for-hire fishing operations, require an Atlantic HMS recreational vessel permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to adjust BFT retention limits by vessel type.

This section focuses on the impacts of the alternatives for defining for-hire fishing in the HMS fishery. The other proposed management measures should have minor, if any, impacts, and for the most part either clarify regulations or provide additional flexibility to NMFS and/or the fishing industry. The HMS Angling category permit would have administrative burden impacts on the public and NMFS, which are examined through Paperwork Reduction Act submission requirements to the Office of Management and Budget. The alternatives for defining for-hire fishing would have impacts on vessels that possess an HMS CHB permit and also fish commercially for YFT and/or sharks, and the analyses focus on these impacts.

The alternatives for defining for-hire fishing would only affect those commercial shark fishermen that also possess HMS CHB permits. An examination of commercial shark permit holders found that four vessels possess such permits in combination, these vessels did not have commercial landings of sharks or swordfish in 1999 or 2000. Thus, it is not anticipated that the alternatives for defining for-hire fishing would have an impact on vessels with shark permits. The alternatives for defining for-hire fishing would have an effect on CHB vessels that both commercially fish for YFT and take fee-paying passengers recreational fishing for Atlantic HMS, and these impacts are presented below.

## 6.1 Analyses of Alternatives

The alternatives analyzed for this RIR would define for-hire fishing by HMS CHBs, and have implications for the applicability of retention limits for YFT and sharks, and possibly for swordfish (if a recreational retention limit were adopted). As discussed above, there are no expected impacts on shark and swordfish landings, as CHB vessels did not have any reported commercial landings of sharks and swords in 1999 or 2000. Thus, the only impacts discussed will be on revenues derived from YFT landings.

### *Impacts on Fishermen*

To assess the impact of these alternatives on revenues throughout the fishery, the number of YFT that is estimated to be landed under each was multiplied by an average weight of 33 lbs. per fish (average YFT weight used in HMS FMP analyses), and then multiplied by the average price per pound of \$1.98 (average ex-vessel YFT price per pound in 2000, live weight) for each alternative. Changes in gross revenues under the various alternatives are presented in Table 13.4. Regarding net revenues, it is not clear what the change in costs would be on a trip due to the ability to retain more or less YFT, but some additional costs are likely involved (additional fishing time, crew wages, ice, fuel, etc.) when more YFT can be retained. For this RIR, a similar change in net revenues is assumed when there is a change in gross revenues.

For the purposes of this RIR, it is assumed that under the status quo, HMS CHBs could only land and sell nine YFT per trip. Commercial handgear YFT trips usually only involve a captain and one or two crew members, so the most YFT that could be landed under the status quo would be nine per trip. For comparative purposes, vessels with General category permits landed an average of 22 YFT per trip in 1999 and 2000. The analyses for this RIR assume that HMS CHBs would land similar amounts of YFT as General category vessels when operating as commercial vessels, if they were not subject to the three YFT per person recreational retention limit.

In 2000, total commercial handgear YFT landings were 283.7 mt. Using the average price of \$1.98 lb., ex-vessel revenues from YFT caught with handgear totaled \$1,238,381 in 2000. This figure represents status quo gross revenues for the YFT commercial handgear fishery.

NMFS' NERO and SERO dealer weighout data indicate that, in 2000, 21 HMS CHB-permitted vessels made a total of 52 trips per year in which YFT were sold. To estimate the change in revenues resulting from the preferred alternative, the difference in average YFT landings for CHBs (assumed to be nine), was subtracted from the average YFT landings for General category vessels (22 YFT). This difference (13) was multiplied by the number of commercial trips per year (52) by CHBs, then multiplied again by the average weight per YFT (33 lbs.) for the increase in landings, and then multiplied by the average price per pound (\$1.98) to calculate the change in gross revenues. Using this method, the preferred alternative would result

in handgear landings of YFT totaling 293.9 mt, with gross revenues of \$1,282,905, an increase of 3.6 percent from the status quo (See Table 13.4).

For Alternative 3, which would define for-hire fishing as when a Coast Guard licenced captain was on board an HMS CHB-permitted vessel, it was assumed that all vessels that operate as both a CHBs and a commercial vessel would be operated by an individual with a Coast Guard licence, and thus would always be subject to the YFT recreational retention limit. This would result in a situation identical to the status quo, where vessels with HMS CHB permits are all subject to the YFT recreational retention limit. Thus, Alternative 3 would not result in a change (from the status quo) in YFT commercial handgear landings or revenues.

### *Impacts on Seafood Dealers*

NMFS has little data regarding the wholesale price of fish or the costs to fish dealers or processors. The preferred alternative for defining for-hire fishing by CHBs would increase the number of commercial handgear-landed YFT purchased by about 3.6 percent.

## **6.2 Conclusion**

Under EO 12866 an action is considered significant if the regulations result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in EO 12866.

The preferred alternatives described in this EA have been determined to be not significant for the purposes of EO 12866, as they would increase revenues and/or increase flexibility for managers and constituents in the commercial handgear fishery for HMS. A summary of the expected net economic benefits and costs of each alternative can be found in Table 13.5.

## **7.0 Preliminary Economic Evaluation**

NMFS has conducted a Preliminary Economic Evaluation (PREE) to analyze the impacts of the alternatives for defining for-hire fishing for CHBs. This analysis, along with those from the RIR, have been used to determine that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities.

The analysis for the PREE has attempted to assess the impacts of the various alternatives on the vessels that participate in the commercial handgear fishery for YFT. The only vessels that would be impacted by the for-hire fishing definition would be those vessels that have HMS CHB permits and sell all or some of their YFT landings. Other commercial handgear vessels (vessels with Atlantic tunas General category permits) would not be affected by this definition. As mentioned above, dealer weighout data indicate that 21 vessels with HMS CHB permits landed and sold YFT on 52 fishing trips in 2000. Using the same assumptions as in the RIR (i.e., that these trips would be limited to nine YFT per trip under the status quo, but would have YFT landings per trip similar to General category vessels (22 YFT/trip) if they were not subject to the recreational target catch requirement), the impact of the various alternatives on the estimated 21 vessels was estimated.

The impacts are shown in Table 13.6. It should be noted that the impacts presented here are only for those changes in revenues from YFT sales. The vessels in question are CHBs, and likely generate a good portion of their income from chartering operations, plus they probably sell other species besides YFT (including other tunas). So, while the change in revenues from YFT sales may be significant, the overall impacts to these vessels' total revenues would be considerably less (in relative terms) than shown in Table 13.6

Under the status quo, the 21 vessels in question, limited to nine yellowfin per trip for the 52 trips, would generate revenues of \$1,456 per year from YFT sales (using the average weights and prices described above). Under the preferred alternative, where it is assumed that vessels will land 22 YFT per trip, the 21 vessels would generate \$3,559 per year from YFT sales, a 144 percent increase. Adoption of Alternative 3 would be expected to result in landings similar to those under the status quo, and revenues would not be expected to change from the status quo.

As mentioned above, NMFS has certified to the Small Business Administration that the proposed rule is not significant. As a result of this certification, an Initial Regulatory Flexibility Analysis was not prepared for this action.

## **8.0 Mitigating Measures**

No significant environmental impacts are expected to result from the preferred alternatives; therefore, no mitigating measures are proposed.

## **9.0 Unavoidable Adverse Impacts**

There are no unavoidable adverse impacts associated with the preferred alternatives.

## **10.0 Irreversible and Irretrievable Commitment of Resources**

There are no irreversible or irretrievable commitments of resources associated with the preferred alternatives.

## **11.0 List of agencies and persons consulted in formulating the proposed rule**

Discussions relevant to the formulation of the preferred alternatives and the analyses for this EA/RIR involved input from several government agencies and constituent groups, including: NMFS Southeast Fisheries Science Center, NMFS Northeast Regional Office, NMFS Enforcement, NMFS Headquarters Staff, and the members of the Highly Migratory Species Advisory Panel (includes representatives from the commercial and recreational fishing industries, environmental and academic organizations, state representatives, and fishery management councils).

## **12.0 List of preparers**

This draft EA/RIR was prepared by individuals from the Highly Migratory Species Management Division and the Office Of Sustainable Fisheries. Please contact the Highly Migratory Species Management Division, Northeast Regional Office, for a complete copy of current regulations for the Atlantic tunas, shark, and swordfish fisheries or for a brochure summarizing the Atlantic tunas regulations.

Highly Migratory Species Management Division  
NMFS-NERO  
One Blackburn Drive  
Gloucester, MA 01930  
phone: (978) 281-9260 fax: (978) 281-9340

### **13.0 References**

- Fisher, M.R. and R.B. Ditton. 1992. Characteristics of billfish anglers in the U.S. Atlantic Ocean. *Marine Fisheries Review* 54(1):1-6.
- NMFS. 1999. Final Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.
- NMFS. 2001. National Report of the United States: 2001. NAT/01/4. 17 pp., plus appendices
- NMFS. 2001a. Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory Species. U.S. Department of Commerce, National Marine Fisheries Service, Silver Spring, MD.

## 14.0 Tables and Figures

**Table 14.1. Estimated total trips targeting large pelagic species from June 5 through November 5, 2000** Source: LPS telephone and dockside interviews.

State/Area	Private Vessel Trips	Charter Trips	Total
VA	930	198	1,128
MD/DE	1,008	915	1,923
NJ	2,934	1,279	4,213
NY	1,093	468	1,561
CT/RI	1,096	372	1,468
MA	6,390	1,108	7,498
NH/ME	1,221	233	1,454
<b>Total</b>	<b>14,672</b>	<b>4,573</b>	<b>19,245</b>

### *Note on Handgear Trip Estimates*

Table 13.1 displays the estimated number of rod and reel and handline trips targeting large pelagic species in 2000. The trips include commercial and recreational trips, and are not specific to any particular species. One can assume that most trips in MA, NH, and ME were targeting bluefin tuna, and that most of these trips were commercial, as over 90 percent of Atlantic tunas vessel permit holders in these states have commercial General category tuna permits. For the other states, the majority of the trips are recreational (in that fish are not sold), with the predominant targeted species consisting of yellowfin and bluefin tunas, and sharks. It should be noted that these estimates are still preliminary and subject to change.

**Table 14.2 Domestic Landings for the Commercial Handgear Fishery, by Species and Gear, for 1997-2000 (mt, whole weight).** Source: U.S. National Report to ICCAT: 2001.

Species	Gear	1997	1998	1999	
Bluefin Tuna	Rod and Reel	617.8	603.4	643.6	579.3
	Handline	17.4	29.2	16.4	3.2
	Harpoon	97.5	133.4	114.4	184.2
	<b>TOTAL</b>	<b>732.7</b>	<b>766.0</b>	<b>774.4</b>	<b>766.7</b>
Bigeye Tuna	Troll	3.9	4.0	0	0
	Handline	2.7	0.1	12.3	5.7
	<b>TOTAL</b>	<b>6.6</b>	<b>4.1</b>	<b>12.3</b>	<b>5.7</b>
Albacore Tuna	Troll	5.2	5.8	0	0
	Handline	4.8	0	4.4	7.9
	<b>TOTAL</b>	<b>10.0</b>	<b>5.8</b>	<b>4.4</b>	<b>7.9</b>
Yellowfin Tuna	Troll	237.6	177.5	0	0
	Handline	90.6	64.7	219.2	283.7
	<b>TOTAL</b>	<b>328.2</b>	<b>242.2</b>	<b>219.2</b>	<b>283.7</b>
Skipjack Tuna	Troll	7.9	0.4	0	0
	Handline	0.1	0	6.6	9.7
	<b>TOTAL</b>	<b>8.0</b>	<b>0.4</b>	<b>6.6</b>	<b>9.7</b>
Swordfish	Troll	0.4	0.7	0	0
	Handline	1.3	0	5.0	8.9
	Harpoon	0.7	1.5	0	0.6
	<b>TOTAL</b>	<b>2.4</b>	<b>2.2</b>	<b>5.0</b>	<b>9.5</b>



**Table 14.3 Domestic Landings for the Commercial Handgear Fishery by Species and Region for 1996-2000 (mt ww). Source: U.S. National Report to ICCAT: 2001.**

Species	Region	1997	1998	1999	
Bluefin Tuna	NW Atl	732.7	766.0	774.4	766.7
Bigeye Tuna	NW Atl	6.6	4.0	11.9	4.1
	GOM	0	0.1	0.2	0.1
	Carib	0	0	0.2	1.5
Albacore Tuna	NW Atl	6.4	5.8	0.6	2.9
	GOM	0	0	≤ .05	0
	Carib	3.6	0	3.8	5.0
Yellowfin Tuna	NW Atl	252.3	177.5	192.0	235.7
	GOM	55.6	60.8	12.7	28.6
	Carib	20.3	3.9	14.5	19.4
Skipjack Tuna	NW Atl	0.7	0.4	0.2	0.2
	GOM	0	0	0.4	0.6
	Carib	7.3	0	5.8	8.8
Swordfish	NW Atl	2.4	2.2	5.0	8.3
	GOM	0	0	≤ .05	1.2

**Table 14.4. Summary of Changes in Commercial Handgear YFT under Various Alternatives to Define For-Hire Fishing**

<b>Alternative</b>	<b>Commercial Handgear YFT Landings (mt)</b>	<b>Commercial Handgear YFT Revenues</b>	<b>Change from Status Quo</b>
<b>Status Quo</b>	283.7	\$1,238,381	N/A
<b>Alternative 2 (preferred alternative)</b>	293.9	\$1,282,905	3.6 %
<b>Alternative 3</b>	283.7	\$1,238,381	0.0 %

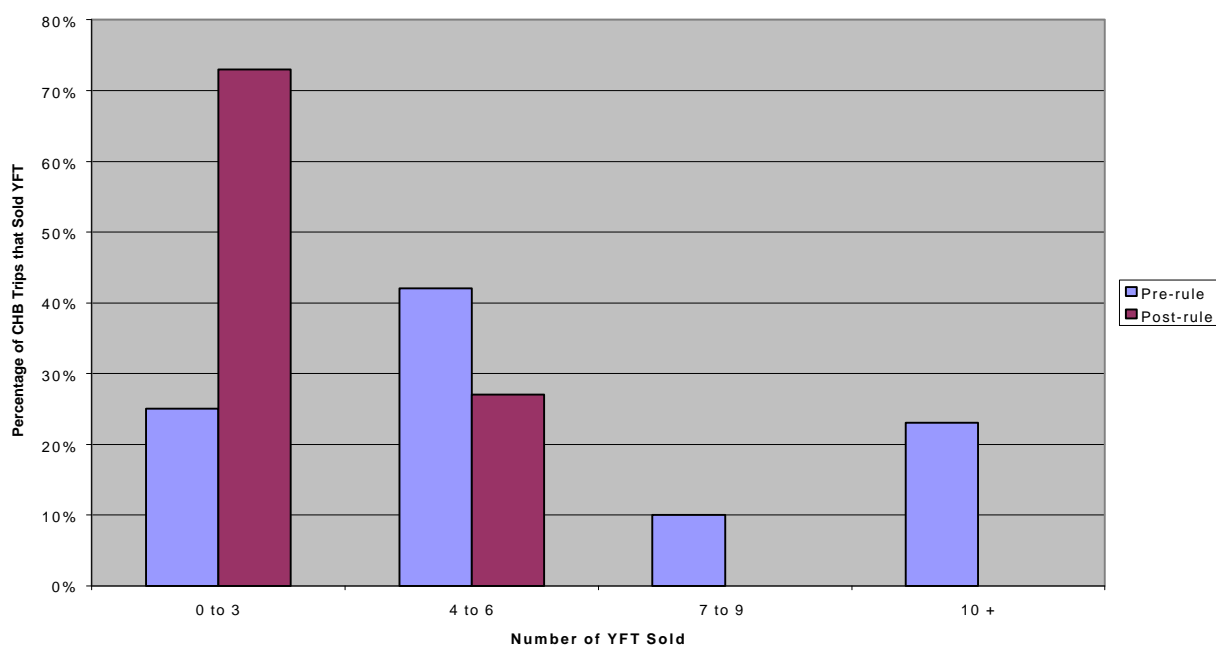
**Table 14.5. Summary of Net Economic Benefits and Costs for Each Alternative (other than the Status Quo) Considered to Define For-Hire Fishing**

<b>Alternative</b>	<b>Estimated Net Economic Benefits</b>	<b>Estimated Net Economic Costs</b>
<b>Status Quo</b>	None	None
<b>Alternative 2 (preferred alternative)</b>	Revenues from YFT could increase by 3.6 percent in the commercial handgear fishery	Minimal. The ability to retain additional YFT could result in some increased costs. such as bait, ice, crew wages, etc., but the increase in revenues should more than compensate for additional costs.
<b>Alternative 3</b>	None - same results as status quo	None - same results as status quo

**Table 14.6. Impacts on Revenues from YFT Sales for Individual Vessels Resulting from the Various Alternatives to Define For-Hire Fishing**

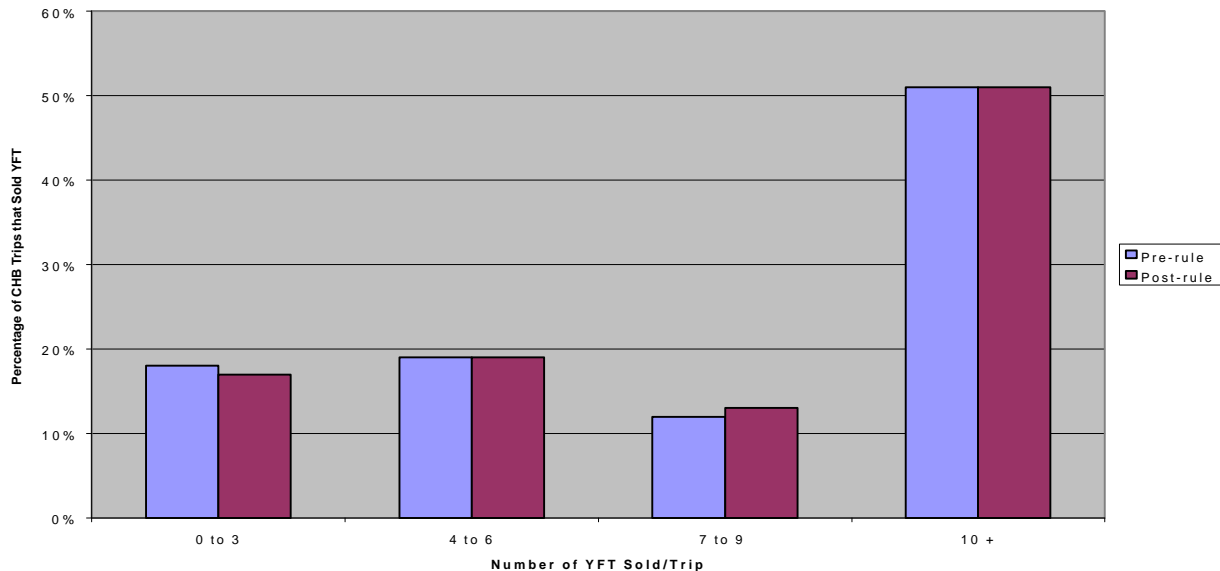
Alternative	Vessel Type	Number of Vessels	Avg. Gross Revenue per vessel from YFT sales	Change in Avg. Gross Revenues per vessel from YFT sales	% Change in Avg. Gross Revenues per vessel from YFT sales
Status Quo	CHB	21	\$1,456	N/A	N/A
Alternative 2 (preferred)	CHB	21	\$3,559	+ \$2,103	+ 144.4 %
Alternative 3	CHB	21	\$1,456	0	+ 0.0 %

**Figure 14.1 Percentage of CHB Trips Selling X Number of YFT Before and After Implementing a 3 per Person YFT Trip Limit.** Source: 1998 - 2000 SERO weighout data.



Note: As of July 1, 1999, CHB vessels were limited to 3 YFT per person per trip. Prior to this rule CHB vessels did not have any YFT retention limits (64 FR 37700, July 13, 1999).

**Figure 14.2 Percentage of CHB Trips Selling X Number of YFT Before and After Implementing a 3 YFT per Person Trip Limit.** Source: 1998 - 2001 NERO weigh-out data.



Note: As of July 1, 1999, CHB vessels were limited to 3 YFT per person per trip. Prior to this rule CHB vessels did not have any YFT retention limits (64 FR 37700, July 13, 1999).

## 15.0 Appendices

### 15.1 Appendix A: Finding of No Significant Impact- DRAFT

The National Marine Fisheries Service submitted the attached regulatory amendment to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) for Secretarial review under procedures of the Magnuson-Stevens Fishery Conservation and Management Act. This proposed rule is accompanied by an integrated document that includes an Environmental Assessment (EA) and a Regulatory Impact Review. Copies of the rule and the supporting document are available from Brad McHale at the Highly Migratory Species Division, NMFS-NERO, One Blackburn Drive, Gloucester, MA 01930 or from our website at [www.nmfs.noaa.gov/sfa/hmspg.html](http://www.nmfs.noaa.gov/sfa/hmspg.html).

The proposed rule proposes to implement regulatory amendments to the consolidated regulations associated with HMS CHB permits, implement a HMS recreational permit, adjust the time frame for permit category changes for Atlantic tunas and Atlantic HMS permits, clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB

vessels, and allow NMFS to adjust BFT retention limits by vessel type. The EA considers information contained in the Environmental Impact Statement associated with the HMS FMP (NMFS, 1999). Based on the following summary of effects, I have determined that implementation of the approved amendment measures will not have significant effects on the human environment.

## **Summary of Effects**

### *Rationale*

Current HMS regulations require vessels that take fee-paying passengers fishing for HMS to obtain an HMS CHB permit, and the vessel operates under the CHB regulations at all times, regardless if the vessel is engaged in for-hire fishing or otherwise on a particular trip. The HMS CHB permit is required in lieu of any other commercial or recreational category tunas permit. A vessel issued an HMS CHB permit could also be issued, but is not required to obtain or possess, swordfish or shark limited access permits. This proposed action would clarify the HMS regulations regarding CHB operations by defining a “for-hire” trip and clarifying the applicability of catch limits when CHBs are engaged or not engaged in for-hire fishing. Consistent with other regulations issued under the authority of the Magnuson-Stevens Act, NMFS proposes to define a for-hire trip as when a vessel carries a passenger who pays a fee or has a specified number of persons aboard: more than three persons for a vessel licensed to carry six or fewer; more than the required number of crew for a Coast Guard inspected vessel. The number of persons aboard would be enumerated inclusive of the operator and crew and the retention limits would also apply to the operator and crew. Given this definition of for-hire fishing, further clarifications to the regulations pertaining to CHB operations are proposed relative to the sale of fish and applicability of retention limits.

Current HMS regulations require recreational vessel owners fishing for Atlantic tunas to obtain an Atlantic tunas Angling category vessel permit. This proposed action would extend the current Angling category permit to be required for recreational fishing for all managed HMS. This proposed action would enable NMFS to monitor recreational landings and catch and release statistics more accurately, thereby enhancing HMS management and research efforts. The total universe of HMS recreational fishermen, and their effort, catch and bycatch (including discards) is presently unknown. Estimates of some of these parameters are currently made using survey instruments, such as the Large Pelagic Survey and the Marine Recreational Fisheries Statistics Survey, as well as reporting from registered tournaments. An HMS recreational permit system would greatly improve information available to NMFS regarding the recreational HMS fisheries by providing an accurate measure of participation, which will greatly help in estimating effort, catch and bycatch (including discards) from one of the most significant components of the HMS fisheries.

Current regulations allow Atlantic HMS and Atlantic tunas permit holders to change their vessel permit category only once per year, and that change must occur before May 15. These

regulations are meant to prevent vessels from fishing in more than one category in a particular fishing year. Due to changes in current method of permit issuance, some modifications to these regulations are required. Atlantic tunas permits can now be obtained, 24-hours a day, 7 days a week, through the Internet based permitting system. As a result of these changes, NMFS proposes to allow the one permit category change per year to occur up until the first day of the fishing year, June 1. In addition, NMFS proposes to allow the one permit category change per year to occur after June 1, so long as it occurs with the permit renewal for that year. These changes would provide NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and still prevent vessels from participating in more than one fishing category in a particular fishing year.

Current regulations under 635.23(b) and (c) could be interpreted to mean that in the Gulf of Mexico, Angling category vessels could retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while CHB vessels could not. This rule would modify the regulations to clarify that the only BFT that could be retained by Angling category and CHB vessels in the Gulf of Mexico is one large medium or giant BFT per vessel per year, caught incidentally while fishing for other species. These large medium or giant BFT would be considered the “trophy” fish for the vessel and sale would not be permitted.

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the CHB category are fishing under the Angling category BFT, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, the current situation can be inequitable for vessels carrying 30 passengers, as their limit is set at the same amount of fish as a vessel with a charter of two to six people. This proposed rule would give NMFS the authority to set differential BFT retention limits by vessel type (e.g., charter boat vs. headboat, so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

### *Conclusion*

Section 1508.27(b) of the implementing regulations for the Council for Environmental Quality identifies 10 concepts for evaluation of significance.

*(1) Beneficial and Adverse Impacts:* Implementation of the proposed actions would have multiple beneficial impacts. They would clarify the existing regulations pertaining to CHB vessel operations by defining for-hire fishing. Application of this definition would clarify the regulations pertaining to CHB operations, such as, the sale of fish, applicability of retention limits and the requirements for a licensed captain to be onboard the vessel. By extending the current recreational permit requirement for Atlantic tunas to all regulated Atlantic HMS NMFS’ collection of data from the recreational HMS fisheries will greatly improve at a relatively small social and economic cost. Adjusting the time frame for changes of Atlantic tunas and Atlantic

HMS permit categories will provide NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and would still prevent vessels from participating in more than one BFT quota category in a particular fishing year. This proposed rule would also give NMFS the authority to set differential BFT retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

(2) *Public Safety:* The proposed action would not have any impact on public safety. Fishing activity or behavior would not change and fishing effort would not expand as a result of this proposed action.

(3) *Unique geographic areas:* The proposed actions would not affect unique geographic areas, except for the clarification of the BFT regulations pertaining to the Gulf of Mexico.

(4) *Controversial effects on the Human Environment:* There would be minimal controversial effects on the human environment, with the possible exception of the proposed HMS Recreational Angling permit requirement. NMFS has determined that the benefits of a Federal Recreational Atlantic HMS permit system, which would accurately identify the existing, active universe of recreational HMS vessels and could be subsequently be used as a tool for any statistical data collection program, would outweigh the public burden associated with applying for and receiving an annual permit.

The other actions in this proposed rule have been requested by fishery participants for some time, and they are expected to support this action. These actions have been discussed extensively by NMFS Highly Migratory Species Advisory Panel, which is composed of representatives from the recreational and commercial fishing industries, the environmental community, academia, and regional and state fishery management authorities.

(5) *Uncertain, Unknown, or Unique Risks:* It is possible that this proposed action would result in increased targeting and landings of YFT by CHB fishermen, although this is expected to be minimal. There are no effects on the human environment that are highly uncertain or that involve unique or unknown risks.

(6) *Precedence:* The proposed actions do not establish new precedence. The proposed for-hire trip definition has been used in NMFS' southeast region and Gulf of Mexico fisheries regulations for quite some time. Vessels recreationally fishing for Atlantic tunas are currently required to obtain a Federal recreational vessel permit, thus the Atlantic HMS Angling permit just extends that requirement to cover all regulated Atlantic HMS. The other proposed actions are more for clarification purposes, and thus do not set new precedence.

(7) *Cumulative impacts:* The proposed actions would lessen the cumulative negative impacts on the regulated Atlantic CHB fishery. The positive impacts to the fishermen are likely to be significant due to increased landings of and gross revenues from YFT. Compliance with the

proposed action would be consistent with the objectives of the HMS FMP and with the recommendations of the International Commission for the Conservation of Atlantic Tunas.

(8) *Adverse effects on resources:* The effects of the proposed action would not apply to any sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources. Should such structures or resources be located in the EEZ, vessels would already avoid those areas to avoid potential gear loss.

(9) *Endangered Resources:* The proposed action would not have an impact on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort.

(10) *Other environmental laws:* The effects of these proposed actions would not have an impact on State or local regulations inside or outside the EEZ. The proposed action would not likely change fishing activity.

For the reasons stated above, implementation of these regulatory amendments, which would clarify certain provisions pertaining to the definition and operations of HMS CHB vessels, implement an Atlantic HMS recreational vessel permit, adjust the time frame for permit category changes for Atlantic tunas and Atlantic HMS permits, clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to adjust BFT retention limits by vessel type, would not significantly affect the quality of the human environment, and preparation of an EIS on the final action is not required by Section 102(2)(c) of NEPA or its implementing regulations.

Approved: \_\_\_\_\_  
Assistant Administrator for Fisheries

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Date